

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 786 of 1998

IN

CIVIL REVISION APPLICATION No 402 fo 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ASSOCIATED BUSINESS CORPORATION

Appearance:

MS HANSA PUNANI, AGP for Petitioner

MR AB ACHARYA for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/01/2000

ORAL JUDGEMENT

#. As in both these Civil Revision Applications the parties are common and arise from the execution of decree passed in

Special Civil Suit No.54 of 1988 the same are being taken up for hearing together and are being disposed of by this common order.

#. The facts of the case in brief are that the plaintiff-respondent filed Special Civil Suit No.54 of 1988 against the defendant-petitioner. This suit was came to be decreed on 29/10/96 by the 4th Joint Civil Judge (S.D.), Godhra. Against the judgment and decree of the trial court the defendant-petitioner filed First Appeal No.1170 of 1997 in this court. Prayer has been made therein for grant of interim relief. On 11/12/1997 the Division Bench of this court in Civil Application No.6691/97 i.e. the application for grant of interim relief passed the order which reads as under :-

"Heard the learned counsel for the respective parties. Ad-interim stay of execution of the decree in question is confirmed subject to the condition that the applicant deposits in the trial court the decretal amount together with the costs and interest within eight weeks from today. On the deposit being made, the same shall be invested with the nationalised bank for a period of three years in the first instance, with liberty to the opponent to withdraw the periodic interest. Rule is made absolute accordingly with no order as to costs."

#. This order dated 11/12/1997 was came to be modified by the Division Bench on the Civil Application No.352 of 1998 filed by the respondent. The order of the court dated 20/1/1998 reads as under :-

"Heard the learned counsel for the respective parties. On the facts and circumstances of the case our previous order in the present Civil Application dated 11th December, 1997 is modified only to the limited extend as indicated below :

`If and when the appellant in appeal (original applicant in the Civil Application) deposits the amount before the trial court, 30 per cent of such amount may be withdrawn by the present applicant on furnishing security to the satisfaction of the trial court. The balance of the 70 per cent of the deposited amount shall be dealt with as per our previous order under reference'.

This application is accordingly disposed of with no order as to costs".

#. The defendant-petitioner in para No.2 of memo of Civil Revision Application No.786/98 stated that after 20/1/98 it has deposited Rs.17,53,190.00 in the court below. The break up of this amount as given out is as under:

1. 14,86,414.00 Towards suit amount
2. 39,026.00 Towards expenditure
3. 2,91,988.00 Towards interest from
29.10.1996 to 18.2.1998

18,17,428.00

64,238.00(-) Towards Income-tax

17,53,190.00

#. This amount was deposited by the petitioner in the court below on 28/2/98 vide cheque No. 065331/4266544, where the execution application filed by the plaintiff-respondent is pending. According to the order of this court dated 11/12/1997 passed in Civil Application No.6691 of 1997 in First Appeal No.1170 of 1997 decretal amount has to be deposited by the defendant-petitioner on or before 5/2/98 in the Court below. That amount was not deposited in time as ordered by this Court and the Executing Court proceeded with the Special Execution Application No.3/97 on the applications filed by the plaintiff-respondent at Exhs. 16 and 17. The Executing Court on 31/3/97 issued distress warrant against the defendant-petitioner for recovery of Rs.19,83,000/=. It is to be noticed here that in the Special Execution application No.3/97, the plaintiff-respondent has prayed for recovery of Rs.34,56,890/=. The defendant-petitioner against this order of the Executing Court preferred Civil Revision application No.786/98. It has come for preliminary hearing in the court on 8/5/98. The matter was admitted and the interim relief in terms of para 5(c) has also been granted. Para No.5(C)

of the memo of civil revision application reads as under :-

"To call for the records and proceedings from the court of learned Civil Judge (S.D.), Godhra in Special Execution Application No.3/97 and during the pendency and final disposal of this Civil Revision Application this Hon'ble Court will be pleased to stay the further proceedings of the Special Execution Application No.3/97 pending on the file of the learned Civil Judge (S.D.), Godhra".

#. The Civil Revision Application No.786/98 then came up for hearing in court on 22/6/98. After hearing the counsel for the parties the interim relief granted on 8/5/98 was confirmed on the condition that the defendant-petitioner deposits in the executing court Rs.19,83,000/= within eight weeks from that day. It has further been ordered that after deposit being made the plaintiff-respondent is free to withdraw 30% of this amount on furnishing security to the satisfaction of trial court and the balance of 70% shall be invested in any nationalised bank initially for a period of 3 years and liberty to the opponent to withdraw the periodical interest. Lastly the court has ordered that in view of the fact that State has already preferred appeal being First Appeal No.1170/97 challenging the judgment and decree of the court below this Civil Revision Application is ordered to be heard along with the said First Appeal. In Civil Revision Application No.786 of 1998 the plaintiff-respondent filed Civil Application No.5818 of 1998 for the vacation of the stay. This Civil Application was disposed of on 22/6/1998. The defendant-petitioner filed Civil Application No.7468 of 1998 and prayer has been made for the extension of time as directed by the court on 22/6/1998 to deposit the amount. This Civil Application was disposed of by this court on 21/8/98. The order of this court reads as under :-

"Heard learned A.G.P. None is present from the side of the respondent. The A.G.P. informs that the matter for sanctioning grant to make compliance of this court's order dated 22/6/98 is likely to be finalised within two weeks and as such two weeks time only is prayed for extending the date of deposit mentioned in the above order. In view of this statement of learned A.G.P., order dated 22/6/98 is modified and it is directed that the amount mentioned in the said order shall be deposited positively by 4/9/98 with this observation the application is disposed of."

#. So in pursuance of this order of the court the amount has to be deposited by the defendant-petitioner by 4/9/98. The defendant-petitioner on 19/12/98 deposited Rs.14,94,482/= in the Executing Court instead of Rs.19,83,000/=. This amount was not deposited within the time as what it was granted by the court. The plaintiff-respondent in the executing court filed application Exh.34 and prayed therein that as the defendant-petitioner has not deposited full amount as directed by this court warrant of confiscation be issued against it. After hearing the counsel for the parties, the learned executing court on 13/1/99 passed the order in favour of the plaintiff-respondent and issued warrant of confiscation under Order 21 Rule 30 of the Code of Civil Procedure Code. Against this order the defendant-petitioner preferred Civil Revision Application No.402/99. This revision application was placed for preliminary hearing in the court on 24/3/99 and the same was admitted and interim relief in terms of Clause (c) has been granted. Clause (c) of the prayer reads as under :-

"Pending hearing and final disposal of this application, further proceedings of the order passed by the learned Civil Judge (S.D.) at Godhra below Exh.34 in Spl. Execution Application No.3/99 and the further proceedings of Spl. Execution Application no.3/97 be stayed".

#. Under the impugned order dated 13/1/1999 on two grounds that the amount as directed to be deposited by this court under order dated 20/6/98 has not been deposited within the stipulated time as well as extended the period and secondly on 22/6/96 the court has directed the defendant-petitioner to deposit the amount of Rs.19,83,000/=:, but it has deposited Rs.14,94,487/= only. the court has said that the petitioner has not produced any legal evidence in support or to justify the delay and deposit of the less amount than what this court has ordered. As a result of this discussion ultimately the court has passed order for recovery of the remaining decretal amount of Rs.6,74,318/=.

#. The learned counsel for the petitioner has failed to give out any justification for this delay made in depositing the amount as directed by this court. Similar is the case to show for what reason and ground instead of Rs.19,83,000/= the defendant-petitioner has felt contented and satisfied to deposit only Rs.14,94,487/=.

##. If we go by the facts of this case, I am constrained to

observe that the officers of the State of Gujarat are not acting in the larger interest and for its benefits. Where the officers and employees of the State of Gujarat are not honest, diligent, careful and care taking it will result ultimately in causing the loss to it. Unfortunately these qualities which are essentially to be possessed by these persons are totally lacking. Not only this the facts of this case reveal that there are all the possibility of helping hand extended by the concerned officers and employees to the decree holder. This court in the first appeal granted interim relief in favour of the petitioner on condition to deposit the amount as stated herein within stipulated period. The amount has to be deposited within stipulated period but it was not done. It is not out of context to state here that for want of accountability of defaulting and erring officers and employees the State Government is suffering a lot everyday. Once it is ordered by this court to deposit the amount, the deposit of the amount would have been in the larger interest of the State of Gujarat and same should have been deposited more so when this order has not been challenged by the State Government in the appeal before the Hon'ble Supreme Court. The orders of the court should have been complied with. Non-compliance thereof, it is clear and it would have been clear to these persons will result in execution of the decree and as a result of which much more than the amount what it is to be deposited has to be paid to the decree holder by the petitioner. The amount has been deposited on 28/2/1998 though due date for the deposit of same was 5/2/98. This delay in deposit of this amount was not explained by the petitioner. The petitioners are conspicuously silent in this regard in the memo of Civil Revision Application also. They have not cared to give out any explanation whatsoever for this their inaction and omission and in the absence of the same only inference which follow therefrom is that it is a deliberate inaction or omission on the part of the officers of the impersonal state to extend the benefits to the decree holder. This deliberate inaction and omission is with consideration or without consideration is not a matter to be gone into at this stage. However, prima facie does appear for some consideration.

##. The State Government if would have cogent and justified reasons or difficult in carrying out the order passed by Division Bench in First Appeal within the stipulated period and if its officers would have really been bona fide persons taking care of their master and worried for the peoples money should have immediately filed an application for extension of time for depositing of the decreetal amount. This has not been done. This inaction or omission on the part of the officers of the impersonal state further

supports the inference which follows from the facts of this case that deliberately and purposely this appears to have been done so that the decree holder may have all the chances to get full decretal amount. Even after receipt of copies of these two applications Exh. 16 and 17, the officers of the State of Gujarat has not taken care to approach to this court in the First appeal for its protection. The order of this court passed in First Appeal is not complied with, was well within their notice and knowledge but still they felt contended and satisfied to go on defending the applications Exh.16 and 17 rather than to approach to this court to get necessary relief. This their conduct fortifies that they appear to have more concerned with the decree holder and not with the State of Gujarat. From the facts of this case it follow that the officers and employees of the State of Gujarat work, function and proceed as if they are paid servants or the persons who are there to take care of the persons who are to be benefited by their inaction or omissions at the cost of the State interest.

##. If we go by the sum claim in the execution application by the decree holder on deposit of Rs.19,83,000/= the petitioner needs not to deposit anything towards decretal amount pending decision of the first appeal. Be that as it may, the executing court has given direction and distress warrant for the recovery of Rs.19,83,000/= and against this order this revision application No.786 of 1998 has been filed. This was the stage where instead of multiplying the proceedings by filing this civil revision application petitioner should have approached to the First Appellate Court and it would have taken care of the matter. This court also in this Civil Revision Application ultimately ordered it to be heard along with the first appeal. Impugned order was passed in execution proceedings of the decree, which is subject matter of the challenge in the First Appeal and for necessary directions against the orders passed by the Executing Court from time to time, the petitioner should have approached to the First Appellate Court by filing Misc. Civil application or Civil Application rather than to multiply the proceedings. Where the petitioner has not complied with the order of the court passed in First Appeal, in such matter the proper course would have been to approach to the First Appellate Court in the First Appeal. The State of Gujarat is the biggest litigant in the state and it has to take care and see that avoidable litigations may not come before the courts. A simple matter which could have been taken care of by the the First Appellate court on filing a civil application or misc. civil application by the petitioner it has been brought up before this court by this fresh matter by none other than the State of Gujarat.

##. The court in civil revision application No.787/98 gave a specific direction to the petitioner to deposit Rs.19,83,000/= but instead of depositing this amount the petitioner has deposited only a sum of Rs.14,84,482/-. The justification given is that out of aforesaid sum the petitioner has to deduct income tax and service charges. It is not the stage where this point is to be decided but this approach of the officers of impersonal state is wholly perverse and it follows therefrom that they appear to have acted in this manner and fashion deliberately and purposely so that each and every penny of the decree may come out from the pocket of the State of Gujarat and the decree holder may be benefited to the maximum extent. Once this court has given the direction to stay further proceedings of execution on the condition of deposit of Rs.19,83,000/= the officers of the State of Gujarat have no power to sit over this order and by applying some resolution or circular of the government to deduct aforesaid amount therefrom. If they would have really been concerned with the peoples money, they are faithful to their duties and are honest, they should have approached to this court in civil revision application No.786/98 for appropriate directions in respect thereof. This has not been done and prima facie it appears to be a deliberate, willful and purposeful inaction or omission on their part so that the execution proceedings may continue and whatever the balance of the decretal amount may come in the court. If this course would have been adopted it would have served twofold purposes. Firstly this heavy amount needs not to be deposited by the petitioner in the executing court and secondly the further litigation would not have been there at the instance of State of Gujarat in this Court. The executing court taking it to be noncompliance of the order of this court passed in Civil Revision Application No.786/98, proceeded in the execution and ultimately under the order dated 30/1/99, which is subject matter of the challenge in the Civil Revision Application No.402/99 ordered for recovery of the balance amount of Rs.6,74,318/-. Against this order, I fail to see any justification in filing of this second revision application. Though this court has stayed this order but the petitioner should have approached in this matter also in the First appeal.

##. From the facts of these two cases, it is clearly born out that at two stages the orders of the court were not complied with. Noncompliance of the first order and result thereof were very well known to the respondent-State but still the second order has also not been complied which is passed in Civil Revision Application No. 786 of 1998. This consistency in their inaction and omission is a matter of

serious concern and fortifies and speaks of possible malafides and oblique motives of the officer concern. Now substantial amount of the decree has come in the court and out of which 30% thereof would have been taken by the decree holder. The only amount remains is six lakhs and odd, the recovery of which has been stayed by this court in the Civil Revision Application No.402/99. As a result of the aforesaid discussion both these civil revision applications cannot be entertained. For the grievances made and reliefs prayed for in these civil revision application, the appropriate course and remedy for the petitioners would have been to approach this court in the First Appeal.

##. In the result, both the civil revision applications are dismissed. Rule is discharged. However, interim relief granted in these two revision applications shall continue for a period of four months. In the meanwhile, the petitioner-State of Gujarat is free to approach to this court in the First Appeal against orders of the executing court. In the facts of the case, no order as to costs.

##. Before parting with the judgment, it is to be stated that it is high time where the appropriate forum to fix accountability of the officers / employees of the State of Gujarat should be there so that the negligent, careless and dishonest officers/employees may not go scot free. The way and manner in which the officers and employees of impersonal state are working, it is to be corrected otherwise the peoples money will go waste with their connivance with the unscrupulous litigants. It is also advisable that such forum on creation be manned by a senior judicial officer. The Chief Secretary of the Government of Gujarat is directed to hold the inquiry in the matter and whosoever is found guilty in the matter departmental inquiry be initiated against them and on proof of his/their negligence, carelessness or dishonesty in the matter appropriately he/they may be punished. This exercise has to be undertaken and completed by the Chief Secretary either himself or through some responsible officer but not below rank of Joint Secretary within a period of six months from the date of the receipt of the writ of this order. The compliance of this order is to be reported to the court. If this court is not satisfied with the report then possibly it may itself undertake exercise of holding this inquiry against the erring and defaulting officers.

(S.K.Keshote, J.)

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